

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE**

**STEPHEN J. ROSEN,**

**Plaintiff,**

**v.**

**GUARDSMARK, LLC, IRA A. LIPMAN,  
ROBERT W. OVERMAN, and RAMONA G.  
MARTIN, individually,**

**Defendants.**

**No. 2:13-cv-02369**

**JUDGE ANDERSON  
MAGISTRATE JUDGE PHAM**

**JURY DEMAND**

**PLAINTIFF’S EMERGENCY MOTION FOR EXPEDITED TELEPHONE  
CONFERENCE WITH MAGISTRATE JUDGE TO COMPEL DEFENDANT IRA  
LIPMAN TO EXECUTE NEGOTIATED SETTLEMENT AGREEMENT**

Comes now the Plaintiff, Stephen J. Rosen (“Mr. Rosen”), by and through counsel, and files this Emergency Motion for Expedited Telephone Conference with Magistrate Judge Tu Pham to Compel Defendant Ira Lipman to Execute Negotiated Settlement Agreement. As grounds, Plaintiff would show the following:

1. A judicial settlement conference was conducted by Magistrate Judge Tu Pham in this matter on Monday, August 18, 2014. Pursuant to the court’s Standing Order for Settlement Conferences, all “parties, or representatives of corporate parties, must be present *in person* at the conference and must possess *full authority* to approve any settlement.” (Docket Entry No. 49). Although Plaintiff requested that Defendant Ira Lipman be compelled to attend the conference, but his presence was excused since his office is in New York City, New York.

2. After a full day of negotiations, the parties were able to reach a settlement agreement at the judicial settlement conference and the terms of the settlement agreement were announced in open court with all parties agreeing to the terms.

3. In the days and weeks following the judicial settlement conference, counsel for the respective parties come to an agreement on a Confidential Settlement Agreement and Global Release (“Settlement Agreement”).

4. Plaintiff, Stephen Rosen and his wife, Bonnie Rosen executed the Settlement Agreement on September 16, 2014, and the undersigned counsel forwarded to counsel for Defendants the Settlement Agreement executed by Mr. and Mrs. Rosen via e-mail on September 17, 2014.

5. Having heard nothing from counsel for Defendants since providing the Settlement Agreement executed by Mr. and Mr. Rosen, on Monday, September 22, 2014, counsel for Plaintiff emailed counsel for Defendants to inquire into the status of the fully executed Settlement Agreement and the settlement payment.

6. On the morning of Wednesday, September 23, 2014, Edward R. Young, Esq., counsel for Defendants called the undersigned counsel for Plaintiff, James K. Simms, IV, and informed him that while the other Defendants, Guardsmark, LLC, Dr. Robert W. Overman, Ramona G. Martin have executed the Settlement Agreement, Defendant Ira Lipman refused to sign the Agreement. Mr. Young was uncertain as to Mr. Lipman’s basis for refusing to sign the Agreement.

7. The undersigned counsel will make themselves available for a telephone conference with Magistrate Judge Tu Pham, if the Court believes a telephone conference is necessary to address these issues but would ask that such be scheduled as soon as possible given the passage of time since the parties reached a settlement.

Magistrate Judge Tu Pham announced the terms of this Settlement Agreement in open court on Monday, August 18, 2014. Over one month has passed since the parties reached an

agreement and Mr. Rosen is awaiting his settlement payment, as well as the fully executed Settlement Agreement. Mr. Lipman's refusal to sign the Settlement Agreement is without any basis or justification and Mr. Lipman is clearly acting in bad faith.

Based on the foregoing, Plaintiff respectfully requests that that this Court expeditiously order the following:

1. That Mr. Lipman immediately execute the Settlement Agreement (which was drafted by his counsel of record and which has been executed by all other parties).
2. That counsel for Defendants provide to counsel for Plaintiff a fully executed copy of the Settlement Agreement within the next 24 hours.
3. That counsel for Defendants overnight the settlement payments set forth in the Settlement Agreement for receipt by counsel for Plaintiff by the close of business Friday, September 26, 2014.
4. That Plaintiff be awarded his reasonable attorneys' fees associated with Defendant Ira Lipman's refusal to execute the negotiated Settlement Agreement as a sanction against Defendant Ira Lipman.

/s/ James K. Simms, IV  
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*Attorneys for Plaintiff*

### **CERTIFICATE OF CONSULTATION**

Pursuant to Local Rule 7.2(a)(1)(B), I hereby certify that on September 24, 2014, I consulted via email with counsel for Defendants, Leo Bearman, Jr. and Edward R. Young, and via telephone with Mr. Bearman, regarding the merits of, positions taken within, and relief sought in this Motion. Defendants' counsel informed me that Defendants cannot consent to the relief sought in this Motion and requested that I delay filing the Motion until early next week. Given the passage of time that has already occurred and the position taken by Defendant Ira Lipman, I informed Mr. Bearman that I could not delay filing the Motion.

/s/ James K. Simms, IV  
James K. Simms, IV

### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was filed electronically on this 24th day of September, 2014. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties listed below. Parties may access this filing through the Court's electronic filing system.

Leo Bearman, Jr., Esq.  
Edward R. Young, Esq.  
Baker, Donelson, Bearman, Caldwell, & Berkowitz, P.C.  
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Memphis, Tennessee 38103

/s/ James K. Simms, IV  
James K. Simms, IV